

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PROGRESSIVE NORTHERN INSURANCE
COMPANY,

Plaintiff,

No. 7:07-cv-04033-CS

v.

DANIEL BELTEMPO, FRANCINE BELTEMPO,
PAMJAM, INC., and JILCO EQUIPMENT
LEASING COMPANY, INC., DANA'S PRO
TRUCKING, INC., TRAILMOBILE CORP.,
TRAILMOBILE PARTS AND SERVICE CORP.,
THERMO KING CORP., INGERSOLL-RAND
CO. LTD., and THERMO KING CORP., a unit of
INGERSOLL-RAND COMPANY LIMITED,

Defendants.

**ELECTRONICALLY
FILED**

**AFFIDAVIT OF TIMOTHY E. DELAHUNT IN OPPOSITION TO
PROGRESSIVE NORTHERN INSURANCE COMPANY'S
MOTION FOR SUMMARY JUDGMENT**

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

I, Timothy E. Delahunt, being duly sworn, state:

1. I am an attorney at law licensed to practice in New York State and admitted before the Court. I am a partner in the firm Kenney Shelton Liptak Nowak LLP, attorneys for defendant Dana's Pro Trucking, Inc. ("Dana's"). I am familiar with the facts and proceedings herein. I make this affidavit in opposition to the motion for

summary judgment by plaintiff Progressive Northern Insurance Company (“Progressive”).

2. Attached hereto as Exhibit A is a true and correct copy of selected portions of the October 4, 2007 deposition of James Slaughter in the action captioned Beltempo v. Dana’s Pro Trucking, Inc., et al. (New York Sup. Ct. Orange Co., Index No.7209-2005).

3. Attached hereto as Exhibit B is a true and correct copy of the Summons and Verified Complaint in the action captioned Beltempo v. Dana’s Pro Trucking, Inc., et al. (New York Sup. Ct. Orange Co., Index No.7209-2005).

4. Attached hereto as Exhibit C is a true and correct copy Dana’s Third-Party Complaint in the action captioned Beltempo v. Dana’s Pro Trucking, Inc., et al. (New York Sup. Ct. Orange Co., Index No.7209-2005).

5. Attached hereto as Exhibit D are the relevant portions of the Commercial Auto Insurance policy issued by Progressive to PamJam, Inc. (“PamJam”) (No. 02121657-1) for the period May 4, 2004 to May 4, 2005.

6. Attached hereto as Exhibit E is a true and correct copy of a February 28, 2006 letter from Northland Insurance to Progressive.

7. Attached hereto as Exhibit F is a true and correct copy of a March 9, 2006 letter from Progressive to PamJam.


8. Attached hereto as Exhibit G is a true and correct March 19, 2006 letter from Progressive to 57 Plains Road, Walden, New York.

9. Attached hereto as Exhibit H is a true and correct copy of a March 19, 2006 letter from Progressive to Northland Insurance.

10. Attached hereto as Exhibit I is a true and correct copy of the complaint in this action.

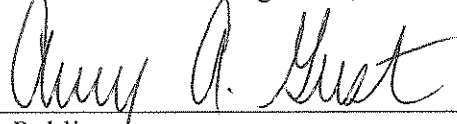
11. Attached hereto as Exhibit J is a true and correct copy of Dana's answer in this action.

12. Attached hereto as Exhibit K is a true and correct copy of a January 25, 2005 letter from the New York State Insurance Fund to DiMartino Farms, and a January 25, 2005 report entitled "Employer's Report of Work-Related Accident/Occupational Disease."



Timothy E. Delahunt

Sworn to before me on August 28, 2008



Notary Public

AMY A. GUST
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN NIAGARA COUNTY
My Commission Expires May 31, 2010